

REMARKS

This paper is responsive to an Official Action that was issued in this case on October 15, 2004. In that Action, the Office rejected claims 20, 23, 24, and 26-28 under 35 USC §103 as being obvious over Consumers Union.org and Consumer Reports web site. Claims 22, 25, and 29 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant hereby adds new claims 30-40. Claims 20, 22-40 are now in the case. Reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

The Office alleges that applicants' claimed invention is obvious in view of Consumers Union/Consumers Reports (hereinafter "CU"). Applicants agree with the Office that:

- CU is an independent, nonprofit testing and information organization.
- CU evaluates products based on several criteria established by CU.
- Members search the CU web site for information about a particular product that is marketed by a number of producers.
- The information provided on a particular product will show the results of tests about that product, evaluating the specifically identified criteria.
- CU evaluates all sorts of products.
- A vegetable oil can be considered a "chemical."

The Office identifies the following differences between CU and applicants' invention, as defined by claim 20:

- CU doesn't specify a particular chemical for purchase.
- CU doesn't permit a prospective purchaser to specify a particular requirement for the chemical of interest.

Applicants' do not disagree with the stated differences, but simply note that there are more differences, many more.

**Section 103 and the
Problems Addressed
by the Applicants**

The rejections that were issued by the Office were under Section 103 —obviousness. Consequently, it is appropriate to explore issues beyond the literal claim language,

such as, for example, the problem that applicants were addressing. This inquiry addresses the reasonableness of using CU as a reference, among other things.

Some of the problems that applicants' were addressing were:

- *How does a purchaser of specialty chemicals deal with the characteristic batch-to-batch variations?*

A user of specialty chemicals will produce a product that is dependent upon the quality or characteristics of the specialty chemical. But those characteristics can vary widely from one batch to the next, even from the same supplier.

- *How does a purchaser of specialty chemicals directly compare offerings from different suppliers?*

This is problematic for several reasons. In the prior art, each supplier or manufacturer of specialty chemicals establishes its own "standard" for each chemical that it sells.

The standard is a set of chemical and physical properties that are used to describe the specialty chemical. To evaluate the variability that inevitably occurs in each batch of chemical produced, the supplier establishes a "specification." The specification is the nominal range for each chemical and physical characteristic that is listed in the standard. The specification typically includes an upper limit and a lower limit for each characteristic. Using the specification, each batch of chemical can be characterized as "in-specification" or "out-of-specification" as to each characteristic.

Since, in the prior art, the supplier sets the standard and specification for each chemical it sells, and the standards and specifications that are established by any one supplier for its products are almost always different from those established by other suppliers, it is usually impossible to directly compare the specialty chemical offerings from different suppliers.

- *Can a supplier's analysis of its specialty chemical offerings be trusted?*

A prospective purchaser might have some reservations about the objectivity of test results because each supplier analyzes its own products. One solution to this problem is provided by using third-party testing facilities that offer buyers and sellers the benefit of independent (i.e., objective) testing.

- *How does a supplier of specialty chemicals promote the sale of excess inventory of a specialty chemical?*

A supplier might be willing to price the excess specialty chemical below its normal selling price. But this is problematic because if a full-fare customer of the supplier learned of this discounted sale, problems would almost certainly arise.

One way to avoid this complication is to sell the excess inventory as a "unbranded" chemical. In other words, the specialty chemical is not identified as being manufactured by the supplier nor is it sold under its trademark. But to what standard and specification does the supplier reference the specialty chemical? If the standard and the specification that it normally used to characterize that specialty chemical are used with the non-branded material, the supplier risks being identified.

The CU Approach

It is agreed that CU is an independent testing organization. For that matter, there are others, such as www.worldwidetesting.com, applicants' admitted prior art. And www.worldwidetesting.com actually tests specialty chemicals, CU doesn't.

It is true that CU evaluates products based on several criteria, which are established by CU. But such similarities, which are superficial at best, end there.

The problems that are inherent in the purchase of specialty chemicals do not arise with the type of products that are analyzed by CU. And that includes "vegetable oil." Chief of these problems is the batch-to-batch variation that is experienced with the manufacture of specialty chemicals.

When CU evaluates a product, that analysis is considered to be representative of that specific product of the supplier. If multiple samples are analyzed, the results are averaged and, again, are presented as being representative of that product from that supplier.

It should be clear that this type of information is utterly useless to a prospective purchaser of a specialty chemical. This provides no more information, and perhaps less, than the *specification* that has historically been provided by a supplier of specialty chemicals. The specification provides, for a specialty chemical, the *nominal* range for each chemical and physical characteristic that is listed in the standard. The evaluation by CU, of the various consumer products that it analyzes, neither

addresses nor suggests a way to address the batch-to-batch variation in the production of a specialty chemical. If batch-to-batch variation is an issue with some of the products that CU tests, it is certainly treated as such by CU.

Again, while much of the foregoing addresses issues that extend beyond the claim language, it is nevertheless an appropriate subject for inquiry in considering whether one would be motivated to look to CU for answers (and in evaluating the significance of the teachings that CU provides). From the foregoing, it doesn't appear that if one were addressing the same problems as the applicant, one would look to CU. They do not provide any teaching that is relevant to the problems under consideration.

It should be clear that the teachings of CU are useless to one dealing with the applicants' problem. But it's also important to note that, irrespective of speciality chemicals and the problems that applicants were addressing, *it is simply not credible to suggest that there is any motivation to modify CU capabilities for any reason whatsoever.* They have been providing essentially the same service to consumers for years and their mission has not changed. And there is certainly no motivation for them to do the things that are taught by applicants' claims, which, among other things, involves sales.

**Claims 20-29 are
Allowable over CU**

Turning now to the claims, claim 20 recites, in pertinent part:

receiving, at a data processing system, a requirement from a prospective purchaser for a first chemical;
comparing, in said data processing system, said requirement to analyses of batches of said first chemical that are available for purchase from at least two different suppliers through said data processing system to identify a batch that satisfies said requirement ... ; and
outputting, from said data processing system, an indicium of said identified batch to said prospective purchaser.

"Requirement"

The Office alleges that the "results of a search on Consumers web site will display a variety of criteria which may correspond to [a] requirement." This is incorrect; the

term “requirement” is an explicitly defined term (page 11, lines 5-7: “allowed ranges [from a prospective purchaser’s point of view] for the measured values of the various chemical and physical characteristics that make up the uniform standard.”) It can be established by: “specifying a range for some or all of the characteristics in the uniform standard, referencing a specification stored in specifications database 430 and referencing a requirement stored in requirements database 434.” See page 14, lines 3-6).

The Office’s use of the term “requirement” does not comport with the specified definition. CU does not disclose anything about a requirement; neither what it is, why it’s needed, how it’s established, nor how it’s used. And a CU data processing system certainly doesn’t receive a requirement, as required by claim 20.

“Prospective Purchaser” and “Available for purchase through the data processing system”

CU does not offer anything for sale. That’s anathema to the CU mission. So there can be no “prospective purchaser for a first chemical ... [that is] available for purchase ... through said data processing system,” as recited in claim 20. While someone who is doing research in preparation for buying a product might visit the CU site, they not going to buy the product from the CU web site. In other words, they are certainly not a “prospective purchaser” of a product —specialty chemical or otherwise— “available for purchase ... through said data processing system.”

“Comparing, in said data processing system ... said requirement to analyses of batches ... that are available for purchase”

CU does not provide the capability to perform a search for a product that satisfies a particular requirement. And even if it did, that product; that is, the one that was actually tested, is not available for purchase from *anyone*, since CU owns it and will not sell it.

“Outputting, from said data processing system, an indicium of said identified batch to said prospective purchaser”

CU does not provide the capability to perform a search for a product that satisfies a particular requirement. Consequently, it doesn’t output an indicium of that product.

**CU is Unrelated to
The Claimed Invention**

Consider the patron of the CU website. Assume that they are researching the purchase of vegetable oil. They don't input a requirement to the CU website, and CU doesn't identify a product that satisfies the requirement that they didn't input. Rather, the prospective vegetable-oil purchaser reviews the ratings listed by CU. Perhaps the ratings provide a fat content. Perhaps they simply provide subjective "better or worse" guidance.

In any case, based on what is learned from the CU website, the prospective purchaser travels to a food store to buy a specific brand of vegetable oil. They don't buy it through CU, and they don't buy a specific lot or batch of vegetable oil. And they can't buy the specific sample of vegetable oil that was analyzed by CU since CU doesn't sell it.

In view of this, it does not seem reasonable that one skilled in the art who was dealing with the problems that applicants have addressed would have looked to CU for guidance. And even if they did look, what possible teaching, suggestion, or motivation would lead one from the CU model to the claimed invention? Even the most tortured reading of claim 20 doesn't permit one to reasonably read the actions of the CU patron on language of that claim.

In summary, CU does not provide any teaching, suggestion, or motivation relevant to applicants' invention, as defined in claims 20-29. Applicants therefore respectfully request that the rejection of these claims over CU be withdrawn.

New Claims 30-40

New claim 30 is dependent on claim 20 and is therefore allowable on that basis. In addition, claim 30 recites the additional patentable feature of:

assigning a rank to at least one of said physical characteristics or chemical characteristics [of the requirement], wherein a value of said rank indicates a relative importance of satisfying said one physical characteristic or chemical characteristic in determining whether or not a batch satisfies said requirement.

Support for this claim is found at pg 14, line 22+.

New independent method claim 31 recites:

outputting, from a data processing system, a uniform standard for a chemical, said uniform standard defined by a supplier-independent set of physical and chemical characteristics of said chemical; and receiving, at said data processing system, a requirement from a prospective purchaser for said chemical, wherein said requirement comprises an allowable range of values for at least some of said physical and chemical characteristics that define said uniform standard, and wherein said chemical is available for purchase via said data processing system.

For the reasons previously discussed, claim 31 is allowable over CU. In particular, CU does not receive a *requirement* from a prospective purchaser. And while claim 31 recites that the chemical is available for purchase through the data processing system, CU, on the other hand, does not sell anything.

Claim 32-36 are dependent on claim 31, and are therefore allowable on that basis. Furthermore, these claims recite additional patentable features, which provide a secondary basis for their allowability.

New independent method claim 37 recites:

receiving, at a data processing system, a requirement from a prospective purchaser for a first chemical; comparing, in said data processing system, said requirement to analyses of batches of said first chemical that are available for purchase through said data processing system to identify a batch that satisfies said requirement, wherein said analyses are obtained from a testing facility that tests samples of said batches in accordance a uniform standard that is established for said first chemical.

For the reasons previously discussed, claim 37 is allowable over CU. In particular, CU does not receive a *requirement* from a prospective purchaser. Furthermore, CU does not compare the requirement to batches of the chemicals that are available for purchase through a data processing system. That is to say, they don't perform this

comparison and they don't sell anything through their "data processing system," or via any other means, for that matter.

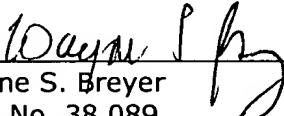
Claim 38-40 are dependent on claim 37, and are therefore allowable on that basis. Furthermore, these claims recite additional patentable features, which provide a secondary basis for their allowability.

Conclusion

It is believed that claims 20 and 22-40 now presented for examination are allowable over the art of record. A notice to that effect is requested.

Respectfully,

DeMont & Breyer, LLC
Attorneys for Applicant



Wayne S. Breyer
Reg. No. 38,089
(732) 578-0103 x12

April 14, 2005

DeMont & Breyer, LLC
100 Commons Way, Suite 100
Holmdel, NJ 07733